



California Regulatory Notice Register

REGISTER 2005, NO. 27-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

JULY 8, 2005

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

CALIFORNIA REGULATORY NOTICE REGISTER (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by the Office of State Publishing and is offered by subscription for \$302.00 (annual price). To order or make changes to current subscriptions, please call (916) 445-5353 or (916) 445-5386. For outside of the Sacramento area, call (800) 963-7860. Periodicals postage paid at Sacramento, CA and additional mailing offices. **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Customer Coordinator, Office of State Publishing, 344 N. 7th Street, Mass Mail/Addressing Services, Sacramento, CA 95814-0212. The Register can also be accessed at <http://www.oal.ca.gov>.

PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. STATE PERSONNEL BOARD

DIVISION 1. ADMINISTRATIVE PERSONNEL
CHAPTER 1. STATE PERSONNEL BOARD
ARTICLE 4. HEARINGS AND APPEALS

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND MEMBERS OF THE GOVERNOR'S CABINET

SUBJECT: PROPOSED AMENDMENTS TO REGULATIONS CONCERNING DISCOVERY IN NON-ADVERSE ACTION EVIDENTIARY HEARINGS

AUTHORITY

Under authority established in Government Code (GC) § 18701, the State Personnel Board (SPB) proposes to amend Title 2 of the California Code of Regulations (2CCR) §§ 57.1 through 57.4 which provide procedures for conducting discovery in non-adverse action evidentiary hearings before the five-member State Personnel Board (Board) or its designated representative. These discovery provisions apply to appeals relating to discrimination, denial of reasonable accommodation, and whistleblower retaliation complaints.

REFERENCE

This regulation is amended to implement, interpret, and/or make specific GC §§ 8547.8, 19683, and 19700–19706.

PUBLIC HEARING

Date and Time: August 30, 2005 from 10:00 to 10:30 a.m.

Place: The Westin Los Angeles
Airport Hotel
Midway Room
5400 West Century Boulevard
Los Angeles, CA 90045

Purpose: To receive written or oral comments about this action.

WRITTEN PUBLIC COMMENT PERIOD

The written public comment period will close Monday, August 22, 2005, at 5:00 p.m. This comment period allows time for SPB staff to provide copies of any written comments for the Board's consideration at the time of the hearing. Any person may submit written comments about the proposed amendments. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the public comment period.

Written comments may be submitted to Bruce Monfross at SPB, P.O. Box 944201, Sacramento, CA 94244-2010, or to bmonfross@spb.ca.gov, or faxed to his attention at (916) 653-4256.

In addition, after the August 30, 2005 hearing, SPB staff will review the testimony as well as the written and verbal comments and revise the proposed regulations as necessary. An additional time for public comment will be set aside during the October 4–5, 2005 meeting in Sacramento for those interested parties who are unable to attend the August 30, 2005 meeting in Los Angeles, or who have additional comments regarding any proposed revisions to the regulations.

AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/CONTACT PERSONS

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which this proposal is based are available upon request to Elizabeth Montoya. The rulemaking file is available for review during normal business hours at SPB, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Bruce Monfross as specified above. Questions regarding the regulatory process in conjunction with this regulation should be directed to Elizabeth Montoya at the SPB, P.O. Box 944201, Sacramento, CA 94244-2010, or by telephone at (916) 654-0842 or TDD (916) 653-1498.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulation(s) available for at least 15 days before the date the regulation is permanently amended.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

GC § 8547.8 authorizes state employees or applicants for state employment to file a complaint with SPB if the employee or applicant believes that he/she

has been retaliated against in employment for having engaged in whistleblowing activities.

GC § 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (Government Code §§ 18500 *et seq.*).

GC § 18214 provides that certain subject regulations adopted by SPB are exempt from specific procedures required by the Administrative Procedure Act (Chapter 3.5, commencing with § 11340 of Part of Division 3).

GC § 19683 authorizes SPB to investigate and conduct hearings concerning complaints of whistleblower retaliation filed by state employees or applicants for state employment.

GC §§ 19700–19706 authorizes SPB to investigate and conduct hearings concerning discrimination complaints filed by state employees or applicants for state employment who believe they have been discriminated against on the basis of age, blindness or color blindness, sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, mental disability, or sexual orientation.

The proposed revisions clarify that the discovery regulations will apply to cases scheduled for a formal evidentiary hearing before an SPB administrative law judge (ALJ) in the following circumstances:

- When discrimination or retaliation is raised as an affirmative defense during the course of an appeal from disciplinary action (Government Code §§ 19574 and 19590).
- When an appeal from rejection during probationary period (Government Code § 19173), medical action (Government Code § 19253.5), non-punitive action (Government Code § 19585), denial of reasonable accommodation (Government Code § 19702), Career Executive Assignment termination (Government Code § 19889.2), or constructive medical termination is filed with SPB.
- When a complaint of discrimination (Government Code § 19702), or whistleblower retaliation (Education Code § 87164; Government Code §§ 8547.8 and 19683) is scheduled for a formal evidentiary hearing.

The proposed revisions also clarify that the discovery regulations will not apply to any other hearing, either formal or informal, conducted by SPB staff. All other revisions are of a technical or clarifying nature.

IMPACT ON SMALL BUSINESSES

No impact on small businesses is anticipated from the implementation of the proposed amendment. Implementing the proposed amendment will affect only state departments and current and prospective employees of state departments.

LOCAL MANDATE

SPB has determined that the proposed action imposes no mandate upon local agencies or school districts and therefore requires no reimbursement pursuant to G.C. § 17561.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies:

The proposed regulation will involve no additional costs or savings to any state agency.

Impact on Housing Costs:

The proposal will not affect housing costs.

Costs or Savings in Federal Funding to the State:

No impact.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed:

No costs to local agencies or school districts are required to be reimbursed.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

This proposal does not impose nondiscretionary costs or savings on local agencies.

Cost Impact on Representative Private Persons or Businesses:

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS

SPB has made an initial determination that the proposed action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES

The adoption of the proposed amendment will neither create nor eliminate jobs in the State of California nor result in the elimination, creation, or expansion of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES STATEMENT

SPB must determine that no reasonable alternative considered by SPB, or that has otherwise been identified and brought to the attention of SPB, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FINAL STATEMENT OF REASONS

It is anticipated that the proposed regulations will be filed with Office of Administrative Law pursuant to Government Code § 18214, under which no Final

Statement of Reasons is required. However, if a Final Statement of Reason is prepared, copies may be obtained from the contact person or backup contact person when it becomes available.

**ACCESSING INFORMATION REGARDING THIS
RULEMAKING FILE ON THE STATE
PERSONNEL BOARD WEBSITE**

The text of the proposed amendment, the Notice of Proposed Amendment of Regulations and Statement of Reasons, and if prepared and when available for review, the Final Statement of Reasons, will be on SPB website at: www.spb.ca.gov.

**TITLE 2. STATE
PERSONNEL BOARD**

**DIVISION 1. ADMINISTRATIVE PERSONNEL
CHAPTER 1. STATE PERSONNEL BOARD
ARTICLE 4. HEARINGS AND APPEALS**

**TO: ALL STATE AGENCIES, EM-
PLOYEE ORGANIZATIONS, AND
MEMBERS OF THE GOVERNOR'S
CABINET**

**SUBJECT: PROPOSED AMENDMENTS TO
REGULATIONS CONCERNING
WHISTLEBLOWER RETALIA-
TION COMPLAINTS PROCE-
DURES**

AUTHORITY

Under authority established in Government Code (GC) § 18701, the State Personnel Board (SPB) proposes to amend Title 2 of the California Code of Regulations (2CCR) §§ 56 through 56.6, which provide procedures for whistleblower retaliation complaints.

REFERENCE

This regulation is amended to implement, interpret, and/or make specific GC §§ 8547.8 and 19683.

PUBLIC HEARING

Date and Time: August 30, 2005 from 9:30 to 10:00 a.m.

Place: The Westin Los Angeles
Airport Hotel
Midway Room
5400 West Century Boulevard
Los Angeles, CA 90045

Purpose: To receive written or oral comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The written public comment period will close Monday, August 22, 2005, at 5:00 p.m. This comment period allows time for SPB staff to provide copies of

any written comments to the five-member State Personnel Board (Board) for their consideration at the time of the hearing. Any person may submit written comments about the proposed amendments. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the public comment period.

Written comments may be submitted to Bruce Monfross at SPB, P.O. Box 944201, Sacramento, CA 94244-2010, or to bmonfross@spb.ca.gov, or faxed to his attention at (916) 653-4256.

In addition, after the August 30, 2005 hearing, SPB staff will review the testimony as well as the written and verbal comments and revise the proposed regulations as necessary. An additional time for public comment will be set aside during the October 4-5, 2005 meeting in Sacramento for those interested parties who are unable to attend the August 30, 2005 meeting in Los Angeles, or who have additional comments regarding any proposed revisions to the regulations.

**AVAILABILITY OF PROPOSED TEXT
AND STATEMENT OF
REASONS/CONTACT PERSONS**

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which this proposal is based are available upon request to Elizabeth Montoya. The rulemaking file is available for review during normal business hours at SPB, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Bruce Monfross as specified above. Questions regarding the regulatory process in conjunction with this regulation should be directed to Elizabeth Montoya at the SPB, P.O. Box 944201, Sacramento, CA 94244-2010, or by telephone at (916) 654-0842 or TDD (916) 653-1498.

**AVAILABILITY OF CHANGES
TO PROPOSED TEXT**

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulation(s) available for at least 15 days before the date the regulation is permanently amended.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

GC § 8547.8 authorizes state employees or applicants for state employment to file a complaint with SPB if the employee or applicant believes that he/she has been retaliated against in employment for having engaged in whistleblowing activities.

GC § 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (Government Code §§ 18500 *et seq.*).

GC § 18214 provides that certain subject regulations adopted by SPB are exempt from specific procedures required by the Administrative Procedure Act (Chapter 3.5, commencing with GC § 11340 of Part of Division 3).

GC § 19683 authorizes SPB to investigate and conduct hearings concerning complaints of whistleblower retaliation filed by state employees or applicants for state employment.

Under existing regulations, any Notice of Findings issued by the Executive Officer regarding whistleblower retaliation complaints filed with SPB is based almost exclusively upon a review of written briefs and documentary evidence submitted by the parties. The proposed revised regulations will grant the Executive Officer the discretion to schedule any whistleblower retaliation complaint accepted by SPB for either an informal hearing before an administrative law judge (ALJ), or an investigation conducted by SPB staff. The assigned ALJ or SPB investigator(s) will have the authority to, among other things, subpoena records and other evidence and to question witnesses prior to submitting their findings and recommendations to the Executive Officer, after which the Executive Officer will issue a Notice of Findings. The assigned ALJ will also have the authority to convert the informal hearing to a formal evidentiary hearing if the circumstances warrant such action. In those cases where the Executive Officer concludes, based on the information presented, that no retaliation has been proven, the Notice of Findings will inform the complaining party that he or she has exhausted his or her administrative remedies, and can seek judicial relief pursuant to the provisions of Government Code § 8547.8(c). In those cases where the Executive Officer concludes that retaliation has been proven, those persons and/or entities found to have engaged in retaliatory acts will be apprised of their right to request a formal hearing regarding the findings of the Executive Officer. The Executive Officer shall have the discretion to prosecute any whistleblower retaliation complaint scheduled for a formal hearing before either an ALJ or the five-member Board, but the complaining party shall also be entitled to be represented by a legal representative of his or her own choosing during that hearing.

IMPACT ON SMALL BUSINESSES

No impact on small businesses is anticipated from the implementation of the proposed amendment. Implementing the proposed amendment will affect

only state departments and current and prospective employees of state departments.

LOCAL MANDATE

SPB has determined that the proposed action imposes no mandate upon local agencies or school districts and therefore requires no reimbursement pursuant to G.C. § 17561.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies: The proposed regulation will involve no additional costs or savings to any state agency.

Impact on Housing Costs: The proposal will not affect housing costs.

Costs or Savings in Federal Funding to the State: No impact.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed: No costs to local agencies or school districts are required to be reimbursed.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies: This proposal does not impose nondiscretionary costs or savings on local agencies.

Cost Impact on Representative Private Persons or Businesses: SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS

SPB has made an initial determination that the proposed action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES

The adoption of the proposed amendment will neither create nor eliminate jobs in the State of California nor result in the elimination, creation, or expansion of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES STATEMENT

SPB must determine that no reasonable alternative considered by SPB, or that has otherwise been identified and brought to the attention of SPB, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FINAL STATEMENT OF REASONS

It is anticipated that the proposed regulations will be filed with Office of Administrative Law pursuant to Government Code § 18214, under which no Final Statement of Reasons is required. However, if a Final Statement of Reason is prepared, copies may be obtained from the contact person or backup contact person when it becomes available.

ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEBSITE

The text of the proposed amendment, the Notice of Proposed Amendment of Regulations and Statement of Reasons, and if prepared and when available for review, the Final Statement of Reasons, will be on SPB website at: www.spb.ca.gov.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

NOTICE OF PROPOSED REGULATORY ACTION

Regulations 1070, 1081 and 1082—First Responders to Terrorism Training

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations. This proposal is made pursuant to the authority vested by Penal Code § 13503—powers of the Commission on POST, and § 13506—Commission on POST authority to adopt regulations. This proposal is intended to interpret, implement, and make specific Penal Code § 13503 (e)—Commission on POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses, § 13519.12—Commission on POST authority to establish training standards involving the responsibilities of first responders to terrorism incidents and training standards for related instruction.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Senate Bill 1350 (McPherson), signed into law and enacted in Penal Code § 13519.12, requires POST to:

1. Establish training standards for, and develop a course of instruction addressing, the responsibilities of first responders to terrorism incidents that:
 - Includes criteria for the curriculum content recommended by the Emergency Response Training Advisory Committee (ERTAC)

- Covers the training needs of peace officers at a managerial or supervisory level and below who are assigned to field duties.
 - Is developed in consultation with the Department of Justice and subject matter experts.
2. Use a variety of formats to develop a course of instruction to train trainers and first responders, for the purpose of maximizing the availability and delivery of this training.

Therefore, POST has developed the eight-hour *Law Enforcement Response to Terrorism (LERT)* and the thirty-two hour *Law Enforcement Response to Terrorism (LERT)—Instructor* courses. Both courses meet or exceed the content requirements identified in SB 1350 and the law enforcement tasks identified by the Office for Domestic Preparedness (ODP) National Training Strategy. Approval for both courses was given by ERTAC in August 2004 and the POST Commission in November 2004. The courses have been submitted to ODP for their approval and for use in California as an alternative to the AWR-160 curriculum mandated by ODP.

The proposed changes to Regulations 1070, 1081 and 1082 would provide for the standardized delivery of first responder to terrorism training statewide, require instructors to complete the POST-certified 32-hour trainer course prior to the delivery or presentation of the 8-hour awareness course, and specify the curriculum content for both courses.

As indicated in Penal Code § 13519.12, each law enforcement agency executive may determine the members of their agency to receive the emergency response to terrorism incidents training. The persons to be trained may include, but are not limited to, peace officers who perform general law enforcement duties at a managerial or supervisory level or below and who are assigned to field duties.

PUBLIC COMMENT

The Commission hereby requests written comments on the proposed actions. POST must receive all written comments no later than 5:00 p.m. on August 22, 2005. Please direct any written comments to Kenneth J. O'Brien, Executive Director, Commission on Peace Officer Standards and Training, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, or by fax at 916.227.2801.

A public hearing is not scheduled. Pursuant to Government Code Section 11346.8, any interested person or his or her duly authorized representative may request that a public hearing be held. The request must be in writing and received by POST no later than 15 days prior to the close of the public comment period.

ADOPTION OF PROPOSED REGULATIONS

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available, at least 15 days before adoption, to all persons whose comments were received by POST during the public comment period and to all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date on which the revised text is made available.

TEXT OF PROPOSAL, RULEMAKING FILE, AND INTERNET ACCESS

The following information regarding the proposed regulatory action is provided on the POST website at www.post.ca.gov/RegulationNotices/RegulationNotices.asp:

- POST bulletin and Notice of Proposed Regulatory Action
- Text of Proposed Regulatory Action
- Initial Statement of Reasons.

Anyone who does not have Internet access may request a copy of the documents listed above by calling 916.227.4847 or by submitting a written request to the contact person listed below. Please refer to POST Bulletin 2005-11. The rulemaking file contains the above-mentioned documents and all information upon which this proposal is based. The file will be maintained for inspection during the Commission's normal business hours (Monday through Friday, 8 a.m. to 5 p.m.).

The Final Statement of Reasons will be prepared after the close of the public comment period. A copy may be requested via the above phone number, by writing to the address under Contact Persons at the end of this notice, or by viewing the document on the POST website at the address cited above.

ESTIMATE OF ECONOMIC IMPACT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-Discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states. The Commission on Peace Officer Standards and Training has found that the proposed amendments will have no affect on California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement and does not impact California businesses, including small businesses.

Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no affect on housing costs.

ASSESSMENT

The adoption of the proposed regulation amendments will neither create nor eliminate jobs in the state of California and will not result in the elimination of existing businesses or create or expand businesses in the state of California.

CONSIDERATION OF ALTERNATIVES

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Please direct any inquiries or comments pertaining to the proposed action to Patricia Cassidy, Associate Analyst, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, by telephone at 916.227.4847, by FAX at 916.227.5271, or by email at Pat.Cassidy@post.ca.gov. The back-up contact person for this proposal is Kenneth L. Whitman, Bureau Chief of Homeland Security at POST. He may be reached by telephone at 916.227.5561, or by email at Ken.Whitman@post.ca.gov.

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (the department) proposes to adopt Section 425.01, regarding the Administrative Fee for Vehicle Code Book, in Article 6 (Administration), Chapter 1, Division 1, of Title 13, California Code of Regulations.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M. on August 22, 2005, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulations.

AUTHORITY AND REFERENCE

The department proposes to adopt the proposed action under the authority granted by Vehicle Code section 1651 in order to implement, interpret or make specific Vehicle Code section 1656(a).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

AB 2996 of the 2002 legislative session amended Vehicle Code Section 1656. This amendment requires that the department publish the California Vehicle Code once every two years and that the department distribute the Vehicle Code at a charge sufficient to pay the entire cost of publishing and distributing the code. Prior to this amendment the department published the Vehicle Code annually and was permitted to charge \$3.00 for a copy of the Code.

The department is proposing an administrative fee of \$6.00 per copy of the Vehicle Code plus the actual cost of shipping the Code books to the requester.

FISCAL IMPACT STATEMENT

- **Cost Or Savings To Any State Agency:** State agencies will be required to pay the administrative fee of \$6 per copy of the Vehicle Code book plus shipping costs, if applicable.

- **Other Non-Discretionary Cost or Savings to Local Agencies:** Local and federal agencies will be required to pay the administrative fee of \$6 per copy of the Vehicle Code book plus shipping costs, if applicable.
- **Costs or Savings in Federal Funding to the State:** None.
- **Cost Impact on Representative Private Persons or Businesses:** There will be an increased cost to obtain a paper copy of the Vehicle Code book.
- **Effect on Housing Costs:** None.

DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action has no effect that would have a significant statewide economic impact on businesses, including the ability of California businesses to compete with businesses in other states. Although there is an increased fee to receive a hard copy of the Vehicle Code book, the Code is available on the department's website.
- The adoption of this regulation will neither create nor eliminate jobs or businesses in the state of California, will not result in the elimination of existing businesses, and will neither reduce nor expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will not affect small businesses since there is no mandate to purchase a Vehicle Code book and the Vehicle Code is available on the Internet.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Bonnie DeWatney, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-8954, or bdewatney@dmv.ca.gov. In the

absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, at (916) 657-5690 or dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeouts to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public, upon request, the initial and final statement of reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (Initial Statement of Reasons and Express Terms) may be accessed at www.dmv.ca.gov, Other Services, Legal Affairs Division, Regulatory Actions Web Page.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (the department) proposes to amend Sections 225.03, 225.09, 225.12, 225.18, 225.21, 225.42, 225.45, 225.48, 225.51, 225.54, and 225.72, and adopt Section 225.35, in Chapter 1, Division 1, Article 3.6, of Title 13, California Code of Regulations to implement a renewal process, amend financial security options, enhance the electronic security process and provide additional registration and titling transaction options.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M. on *August 22, 2005*, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulations.

AUTHORITY AND REFERENCE

The department proposes to adopt the proposed action under the authority granted by Vehicle Code section 1651, in order to implement, interpret or make specific Section 1685 of the Vehicle Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code section 1685 authorizes the department to contract with private industry partners to electronically process and update registration and titling transactions. The intent of this proposed regulation is to implement a renewal process, amend the financial security options, enhance the electronic security process, and provide additional registration and titling transaction options.

§ 225.03 Application Requirements. Section 225.03 would identify new revision dates for the initial application forms, identify the BPA Program Administrator's current mail station, would amend the fingerprint process to repeal the Federal Bureau of Investigation (FBI) fingerprint check and would adopt a new initial application requirement for a business partner applicant that is also a registration service or a dealer.

§ 225.09 Financial Security Requirements. Section 225.09 is proposed to amend the bond language to conform to the department's standard bond language and identify the new surety bond form. This section would repeal the irrevocable letter of credit as an option to the surety bond requirement and would adopt a cash deposit option. The amount of financial security required in the surety bond for second-line business partners would be amended based on the type of registration and titling transaction. This section would allow a surety bond rider to be

accepted when adding registration and/or titling transactions to an existing surety bond.

§ 225.12 Business Partner Contract. Section 225.12 is proposed to provide the business partners a date when a renewal application may be submitted.

§ 225.18 Cause for Refusal to Enter into a Contract and Issue a Permit. Section 225.18 is proposed to amend for minor changes of punctuation.

§ 225.21 Review of Criminal History Information. Section 225.21 is proposed to amend for minor changes of punctuation.

§ 225.35 Renewal. Section 225.35 is proposed to be added to inform the business partners of the renewal application requirements.

§ 225.42 Business Partner Changes. Section 225.42 is proposed to amend to update the mail station identified to send forms.

§ 225.45 Customer Fees. Section 225.45 is proposed to amend to add another exemption to the Business Partner Automation Disclaimer form, REG 4020 requirement and adds the maximum amounts for the additional types of vehicle and titling transactions.

§ 225.48 Transaction Fee. Section 225.48 is proposed to amend to add the additional types of vehicle registration and titling transactions that would require the \$3 transaction fee and update the mail station designated for payment of the transaction fee.

§ 225.51 Information Security Requirements. Section 225.51 is proposed to amend to identify the new interface conduit process and accompanying information technology security handbook for the Internet interface.

§ 225.54 Transaction Procedures and Inventory Requirements. Section 225.54 is proposed to amend the section to identify the new revision date to the transaction and control inventory handbook that will include the procedures for the additional registration and titling transactions.

§ 225.72 Voluntary Closing. Section 225.72 is proposed to amend to update the mail station for the BPA Program Administrator and the department's Field Office support Unit.

DOCUMENTS INCORPORATED BY REFERENCE

- Business Partner Automation Application First-Line Business Partner form, REG. 4024 (REV. 4/2005).
- Business Partner Automation Application Second-Line Business Partner form, REG. 4025 (REV. 4/2005).
- Business Partner Automation Application First-Line Service Provider form, REG. 4023 (REV. 4/2005).
- Occupational License form, OL 39 (No Revision Date)

- Business partner Automation Surety Bond form, REG 866 (REV. 4/2005)
- IT Security Guidelines for Use in BPA Program form, (January 2004)
- Business Partner Automation Program Renewal Application form, REG 5056 (REV. 2/2005)
- California DMV Security Requirements for the Internet—Business Partners (Revised November 2004)
- BPA Transaction Procedures and Inventory Requirements Handbook (April 13, 2005)

These forms are not published in Title 13 because it would be impractical and cumbersome to publish the forms in the department's regulations. The forms are presently available from the department and may be found on the department's website at www.dmv.ca.gov.

FISCAL IMPACT STATEMENT

- Cost Or Savings To Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations implement existing statutes by implementing a renewal process, amending the financial security options, enhancing the electronic security process, and providing additional registration and titling transactions.
- Effect on Housing Costs: None.

DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. No studies or data were relied upon in support of this proposal.
- The adoption of this regulatory action will neither create nor eliminate jobs or create businesses in the state of California, will not result in the elimination of existing businesses, and will not reduce or expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a

mandate that requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.

- The proposed regulatory action will not affect small businesses because the proposed regulatory action implements existing statutes by implementing a renewal process, amending the financial security options, enhancing the electronic security process, and providing additional registration and titling transactions.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, were held on February 3, 2005, and April 21, 2005, to address issues amended or added in the proposal.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Christie Patrick, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-5567, or cpatrick@dmv.ca.gov. In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, at (916) 657-5690 or e-mail dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the final statement of reasons, and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regu-

latory Action, the Initial Statement of Reasons and Express Terms) may be accessed at www.dmv.ca.gov/about/lad/regactions.htm.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 202, 355 and 3000 of the Fish and Game Code and to implement, interpret or make specific sections 202, 355, 356 and 3000 of said Code, proposes to amend Section 506, Title 14, California Code of Regulations, relating to shooting hours for migratory game birds.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current regulations in Section 506, Title 14, California Code of Regulations (CCR), provide shooting hours for migratory game birds. These shooting hours are from one-half before sunrise to sunset throughout the State except in areas open to hunting on, over or adjacent to the waters of Morro Bay, San Luis Obispo County. At Morro Bay, shooting hours are from 8:00 a.m. to sunset. The later start time results in less-than-optimum hunting conditions for those who hunt on Morro Bay because most migratory game birds are most active in the time period near sunrise. This exception for Morro Bay was enacted due to concerns of users of the State Park campground regarding the sounds from shotguns early in the morning. In 1983, the hunting boundary area was changed and hunting no longer occurs adjacent to this campground; therefore this exception is no longer necessary. The Commission is proposing to amend the shooting hours for Morro Bay to begin either at 7:00 a.m. or one-half hour before sunrise.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the

Board of Supervisors Chambers, 1050 Monterey Street, 2nd Floor, San Luis Obispo, California on Friday, August 19, 2005, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before August 12, 2005, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on August 16, 2005. All comments must be received no later than August 19, 2005, at the hearing in San Luis Obispo, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Robert R. Treanor or Sherrie Koell at the preceding address or phone number. **John Carlson, Department of Fish and Game, phone (916) 445-3555, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations adjust the shooting time for waterfowl hunting in the Morro Bay Special Management Area. The proposal is expected to be economically neutral to business.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:
The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in

carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 16. ACUPUNCTURE BOARD

NOTICE IS HEREBY GIVEN that the Acupuncture Board is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a **hearing to be held at the Milton Marks Conference Center, Lower Level Auditorium, 455 Golden Gate Avenue, San Francisco, CA, on August 22, 2005, at 9:00 a.m.** Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice must be received by the Board at its office not later than 5:00 p.m. on August 22, 2005, or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 4933, 125.9 and 148 of the Business and Professions Code, and to implement, interpret or make specific Sections 125.9 and 148 of the Business and Professions Code, the Board is considering changes to Division 13.7 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to SB 362, statutes of 2003, section 125.9 of the Business and Professions Code was amended to increase the amount of an administrative fine to \$5,000. The proposed language would amend section 1399.465 of Division 13.7 of Title 16, which would allow the board to impose a civil penalty between \$2,501 and \$5,000 where exceptional circumstances were present. The enhanced civil penalty would be appropriate where a violation has an immediate relationship to the health and safety of another person, the cited person has a history of two or more prior citations of the same or similar violations, the citation

involves a multiple violation that demonstrates a willful disregard of the law or the citation involves a violation or violations perpetrated against a senior citizen or disabled person.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Cost or Savings to State Agencies Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has determined that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting California business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effects on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would only affect small businesses if they violate the law.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

The Board invites any interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Acupuncture Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons and all the information upon which this proposal is based, may be obtained at the hearing or prior to the hearing upon request by contacting Janelle Wedge, (916) 445-3021, at the Acupuncture Board, 444 North 3rd Street, Suite 260, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared by making a written request to the contact person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Marilyn Nielsen, Executive Officer
444 North 3rd Street, Suite 260
Sacramento, CA 95814
(916) 445-3021
FAX: (916) 445-3015
E-Mail: Marilyn_Nielsen@dca.ca.gov

The backup contact person is:

Janelle Wedge, Administrative Coordinator
444 North 3rd Street, Suite 260
Sacramento, CA 95814
(916) 445-3021
FAX: (916) 445-3015
E-Mail: Janelle_Wedge@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to one of the contact persons named above.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.acupuncture.ca.gov

TITLE 16. ACUPUNCTURE BOARD

NOTICE IS HEREBY GIVEN that the Acupuncture Board is proposing to take the action described in the Informative Digest. Any person interested may

present statements or arguments orally or in writing relevant to the action proposed at a **hearing to be held at the Milton Marks Conference Center, Lower Level Auditorium, 455 Golden Gate Avenue, San Francisco, CA, on August 22, 2005, at 9:00 a.m.** Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice must be received by the Board at its office not later than 5:00 p.m. on August 22, 2005, or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 4933 of the Business and Professions Code, and to implement, interpret or make specific Sections 4938, 4945, 4949 and 4955 of the Business and Professions Code, the Board is considering changes to Division 13.7 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 4945 of the Business and Professions Code requires the Board to establish standards for continuing education for acupuncturists. As a result of several studies/group panel meetings, the Board determined the following amendments were necessary to establish current standards for continuing education.

1. Amend Section 1399.480

The Board proposes to amend Section 1399.480 to change the definition of one hour and minor cleanup to existing language.

2. Amend Section 1399.481

The Board proposes to amend Section 1399.481 to make minor cleanup to existing language and reference the correct citation to approved schools.

3. Amend Section 1399.482

The Board proposes to amend Section 1399.482 to make minor cleanup to existing language and remove language that would more appropriately be referenced in Section 1399.484.

4. Amend Section 1399.483

The Board proposes to amend Section 1399.483 to classify courses submitted for approval into two categories; to limit the amount of CE hours granted in one day to 8 hours; limit the number of hours approved for courses taught simultaneously in two languages; prohibit practical or hands on techniques for independent or home study courses; require passage of an examination for courses approved for independent or home study; and, prohibit providers from selling or discussing name brand products during a course.

5. Amend Section 1399.484

The Board proposes to amend Section 1399.484 to make minor cleanup to existing language including adding language from 1399.482 which is more appropriate for this section and require the level of difficulty of a course be included in a course request.

6. Amend Section 1399.485

The Board proposes to amend Section 1399.485 to be more specific as to the type of discipline an instructor must be free of and make more specific the amount of experience an instructor must have.

7. Amend Section 1399.486

The Board proposes to amend Section 1399.486 to impose stricter guidelines in advertising by requiring that course titles reflect course content without market language, state the level of difficulty of a course and state a full disclosure of all products that will be for sale after completion of a course.

8. Amend Section 1399.487

The Board proposes to amend Section 1399.487 to make minor cleanup to existing language so the language flows better and more understandable and expand the reasons for denial or withdrawal of approval of a provider.

9. Amend Section 1399.488

The Board proposes to amend Section 1399.488 to delete the requirements of the Permit Reform Act, which has been repealed.

10. Amend Section 1399.489

The Board proposes to amend Section 1399.489 to require as a condition of first renewal a minimum of four hours of continuing education in ethics and practice management; require a minimum of four hours of continuing education in drug/herb interaction as a condition of renewal every two years; require passage of an exit exam for independent or home study continuing education course as a condition to receive credit; limit the number of credit hours for category 2 courses.; and delete the provision allowing instructors to receive credit for courses they teach.

11. Amend Section 1399.489.1

The Board proposes to amend Section 1399.489.1 to require licensees as a condition to restore their license from an inactive status, to complete four hours in the interaction of drugs and herbs as part of the required 30 hours of continuing education.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Cost or Savings to State Agencies Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has determined that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting California business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effects on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations will have an affect on small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

The Board invites any interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Acupuncture Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons and all the information upon which this proposal is based, may be obtained at the hearing or prior to the hearing upon request by contacting Janelle Wedge, (916) 445-3021, at the Acupuncture Board, 444 North 3rd Street, Suite 260, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared by making a written request to the contact person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Marilyn Nielsen, Executive Officer
444 North 3rd Street, Suite 260
Sacramento, CA 95814
(916) 445-3021
FAX: (916) 445-3015
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Janelle Wedge, Administrative Coordinator
444 North 3rd Street, Suite 260
Sacramento, CA 95814
(916) 445-3021
FAX: (916) 445-3015
E-Mail: Janelle_Wedge@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to one of the contact persons named above.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.acupuncture.ca.gov

TITLE 16. ACUPUNCTURE BOARD

NOTICE IS HEREBY GIVEN that the Acupuncture Board is proposing to take the action described in the Informative Digest. Any person interested may

present statements or arguments orally or in writing relevant to the action proposed at a **hearing to be held at the Milton Marks Conference Center, Lower Level Auditorium, 455 Golden Gate Avenue, San Francisco, CA, on August 22, 2005, at 9:00 a.m.** Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice must be received by the Board at its office not later than 5:00 p.m. on August 22, 2005, or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 4933 Business and Professions Code, and to implement, interpret or make specific Section 4955 of the Business and Professions Code, the Board is considering changes to Division 13.7 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 4955 of the Business and Professions Code requires the Board to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases. One way of meeting that requirement and protecting the public is amending section 1399.450 and 1399.451 eliminating their option to use non-disposable needles and adding section 1399.454 requiring the use of single use needles.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Cost or Savings to State Agencies Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has determined that the proposed regulatory action will have the following significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

An Occupational Analysis was conducted in 1996 which included a survey that was sent to 1,070 licensed acupuncturists. The survey included a question on the type of needles acupuncturists use (disposable vs. reusable) in their practices. Ninety nine percent (99%) of those who responded to the survey answered that they only use disposable needles. While this survey supports a finding that there is a high percentage of acupuncturist that are using single use needles, the Board acknowledges that the proposed regulatory action may have a direct economic or fiscal impact on those acupuncturists who are still sterilizing their needles. However, the overall fiscal impact would be minimal because the average needle only costs between a half cent to three cents. In fact, the switch to the use of single use needles may provide a cost savings for licensees who are currently sterilizing needles because it would eliminate the cost of purchasing and maintaining equipment as well as the labor costs involved in the sterilization process.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Businesses: Acupuncture businesses may have a cost impact. However, the overall fiscal impact would be minimal because the average needle only costs between a half cent to three cents. In fact, the switch to the use of single use needles may provide a cost savings for licensees who are currently sterilizing needles because it would eliminate the cost of purchasing and maintaining equipment as well as the labor costs involved in the sterilization process.

Effects on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

The Board invites any interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Acupuncture Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons and all the information upon which this proposal is based, may be obtained at the hearing or prior to the hearing upon request by contacting Janelle Wedge, (916) 445-3021, at the Acupuncture Board, 444 North 3rd Street, Suite 260, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared by making a written request to the contact person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Marilyn Nielsen, Executive Officer
444 North 3rd Street, Suite 260
Sacramento, CA 95814
(916) 445-3021
FAX: (916) 445-3015
E-Mail: Marilyn_Nielsen@dca.ca.gov

The backup contact person is:

Janelle Wedge, Administrative Coordinator
444 North 3rd Street, Suite 260
Sacramento, CA 95814
(916) 445-3021
FAX: (916) 445-3015
E-Mail: Janelle_Wedge@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to one of the contact persons named above.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.acupuncture.ca.gov

TITLE 16. BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally, or in writing, relative to the action proposed at a hearing to be held at the Shelter Pointe Hotel and Marina, 1551 Shelter Island Drive, San Diego, California, 92106, on August 25, 2005, at 2:00 p.m. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on August 22, 2005, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 163.5 and 2570.20 of the Business and Professions Code, and to implement, interpret or make specific sections 2570.9, 2570.10, and 2570.16 of the Business and Professions Code, the Board is considering revising Division 39, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend section 4130. Fees

Existing law authorizes the Board to charge occupational therapists and occupational therapy assistants a license or certification renewal fee not to exceed \$150 annually and a delinquent fee that is 50% of the renewal fee. When the Board was established, the renewal fees were set at the maximum amount of \$150 to create a fiscally sound fund condition in an amount necessary to support its regulatory activities. To date, the Board has licensed over 9,600 practitioners and the fund condition now supports a reduction in fees. The proposed regulation would reduce renewal fees to \$50 annually and delinquent fees to \$25.

Limited permits are issued to new graduates for a period of four months to allow them time to take and pass the licensing examination given by the National

Board for Certification in Occupational Therapy (NBCOT). If the limited permit holder is successful in passing the first examination prior to the permit's expiration date, the fee for the limited permit is applied to the initial license or certificate fee. If the limited permit holder fails the examination or fails to take the examination before the permit's expiration date, the fee is forfeited. Current regulations set the fees for a limited permit at \$100 and the initial license fee at \$150. Initial license or certificate fees are prorated based on the applicant's birth month and the month the license or certificate is issued, and can range from \$75 to \$212.50. The proposed regulation would reduce the fee for a limited permit from \$100 to \$75. The proposal would eliminate the need to process refunds of \$25 or less to limited permit holders whose initial license or certificate fees are less than \$100. The proposal would also reduce the amount of money forfeited by those limited permit holders who do not pass the examination.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that is known to the Board is:

Occupational therapists and occupational therapy assistants will pay a reduced fee for license/certification renewal and/or delinquent renewals.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not affect small businesses because the regulation does not regulate small businesses, does not require reports or any other compliance activities.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the California Board of Occupational Therapy, 444 North Third Street, Suite 410, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

April Freeman
California Board of Occupational Therapy
444 North Third Street, Suite 410
Sacramento, CA 95814
(916) 322-3278
(916) 445-6167 (FAX)
April_Freeman@dca.ca.gov

The backup contact person is:

Jeff Hanson
California Board of Occupational Therapy
444 North Third Street, Suite 410
Sacramento, CA 95814
(916) 324-4353
(916) 445-6167 (FAX)
Jeff_Hanson@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at www.bot.ca.gov.

TITLE 17. DEPARTMENT OF HEALTH SERVICES

ACTION

Notice of Emergency Rulemaking
Title 22, California Code of Regulations

SUBJECT

Radiation Control Fee Adjustments, **R-03-04E**

The California Department of Health Services (Department) has adopted the regulations described in this notice on an emergency basis, and they are now in effect.

PUBLIC PROCEEDINGS

The Department will conduct a public hearing commencing at 10 a.m. on August 24, 2005 in the Auditorium, 1500 Capitol Avenue, Sacramento, CA, during which time any interested person or such person's duly authorized representative may present statements, arguments, or contentions (hereinafter "comments") relevant to the action described in this notice.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation control number, R-03-04E:

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on August 26, 2005, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, P.O. Box 997413, Sacramento, CA

95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or

2. By fax transmission: (916) 440-7714; or
3. By email to regulation@dhs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "R-03-04E" in the subject line to facilitate timely identification and review of the comment), or
4. By using the "Making Comments" link to the Department website at <http://www.dhs.ca.gov/regulation/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

TO OBTAIN THE REGULATIONS REFERENCED IN THIS NOTICE:

1. Materials regarding these regulations (including this public notice, the regulation text, and the Initial Statement of Reasons) that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/> and then clicking on the "Select DHS regulations" button.
2. In order to request a copy of this regulation package be mailed to you, please call (916) 440-7695 or email regulation@dhs.ca.gov.

INQUIRIES

Inquiries regarding the substance of the emergency regulations described in this notice may be directed to Phillip Scott of the Radiation Health Branch at (916) 440-7978.

All other inquiries concerning the action described in this notice may be directed to Cathy Ruebusch of the Office of Regulations at (916) 440-7841, or to the designated backup contact person, Charles Smith, at (916) 440-7693.

Upon request, this document will be made available in Braille, large print, and audiocassette or computer disk. To obtain a copy in one of these alternate formats, please call or write: Cathy Ruebusch, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7841 and/or California Relay at 711/1-800-735-2929.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The Legislature of the State of California has determined that the public interest requires that the people of this state be protected from excessive and improper exposure to ionizing radiation. In this regard,

the Legislature established a legal framework for the use of radioactive materials, registration of radiation producing machines, certification in radiologic technology and nuclear medicine technology, and the collection of fees from the radiation user community for the provision of a radiation safety program.

The Radiation Control Law (Health & Safety Code, § 114960 et seq.) authorizes the Department of Health Services (Department) to promulgate regulations regarding sources of ionizing radiation for the protection of the health and safety of the public and radiation workers. The Radiologic Technology Act (Health & Safety Code, §§ 106965 through 107111 and 114840 through 114896) authorizes the Department to promulgate radiologic technology certification regulations prescribing standards of education, training and experience for individuals who expose humans to X-rays. Health and Safety Code sections 107150 through 107175 authorize the Department to establish standards of competence for individuals practicing nuclear medicine technology. The Mammography Quality Assurance Act of 1992 (Stats. 1992, ch. 870) requires the Department to adopt registration and certification requirements for mammography equipment (Health & Safety Code, § 115060 subdivision (e)). Finally, section 100275 of the Health and Safety Code authorizes the Department to promulgate regulations to carry out its duties. The regulations that implement, interpret and make specific the provisions of the Radiation Control Law, Radiologic Technology Act and nuclear medicine technology laws are in title 17, California Code of Regulations, sections 30100 through 30543.

In 1993, the legislature enacted section 114980 of the Health and Safety Code, which established the Radiation Control Fund (RCF) as a special fund in the state treasury. The RCF covers the costs for implementation and enforcement of the Radiation Control Law, Radiologic Technology Act and laws relating to nuclear medicine technology and regulations adopted there under. All moneys, including fees, penalties, interest earned and fines collected, are deposited into the fund and are only available to the Department as appropriated by the legislature. Further, funds in the RCF are the only funds available to the Department for administering the above laws.

The Department's fees supporting the above laws were established in 1993 and have not been adjusted except by the Legislature through Budget Acts. For example, annual fees for certified radiologic technologists increased from \$20.50 in 1993 to \$20.86 in 1996, an increase of only 1.7 percent, and have not been adjusted since. Since 1996, changes in federal and state legislative and regulatory mandates, new use of radiopharmaceuticals, and changes in radiologic technology have resulted in the Department increasing

technical staff to conduct the mandated activities. This increase in staff, as well as, increases in salary, wages, benefits, operating expenses, distributed overhead and facility costs have resulted in increased Departmental costs not anticipated when the previous funding levels were established. Therefore, the 1996 funding levels have not kept pace with the Department's costs to perform legislatively mandated functions. Since 1996, the RCF has maintained a prudent fiscal reserve that has covered the Department's expenditures above the income generated by the fees. However, funding projections indicate that the RCF prudent fiscal reserve will be exhausted June 30, 2005, resulting in deficit spending to maintain current Departmental activities beginning in the first quarter of fiscal year 2005-06. At that time, the Department would have to scale back its activities to the level supported by the funding provided by the 1996 fees, as the Department has no other statutorily available funding source. Therefore, beginning July 1, 2005, only the highest public health priorities would be performed. Priorities that would not be performed include routine preventative inspections, environmental monitoring of nuclear power plants, licensee facilities and vehicular accident scenes involving radioactive material, terrorist related security inspections, preparing first responders for terrorist-related activities involving radioactive material, certification of individuals to take X-rays and use radioactive material for medical purposes resulting in decreased availability of health care professionals, track low-level radioactive waste (LLRW), and promote LLRW reduction activities.

Further, with the Department's inability to perform all federally mandated radiation protection activities, the federal Government may revoke the State's agreement to exercise authority over the use of radioactive material and reassert federal regulatory authority in California. Such action would result in regulatory control only of radioactive material subject to the Atomic Energy Act of 1954 as amended. Large amounts of radioactive material would still be under the authority of the State, but with no protection program to ensure the public health and safety. As evidence of possible revocation of the State's Agreement, the U.S. Nuclear Regulatory Commission (NRC) placed the State's program on heightened oversight on August 12, 2004 due to a finding after inspection that there was inadequate funding and staff to appropriately conduct the program in accordance with the NRC agreement.

The Department finds that this restriction in its radiation protection activities will result in serious and unnecessary harm to the public and the environment immediately and in the future.

Accordingly, the Department has, by emergency action, amended sections 30100, 30145, 30145.1, 30225, 30230, 30231, 30408, and 30535, adopted sections 30194.1, and 30194.2, and repealed section 30232 in title 17, California Code of Regulations. This emergency regulation also amended the statutory authority and reference citations for the applicable Health and Safety Code sections as recodified by Statutes 1995, Chapter 415.

The amendments, adoptions and repeals to Title 17 are as follows:

Section 30100 was amended to repeal an out-of-place fee calculation found in subsection (q) to prevent duplication and inconsistency with the specification adopted in section 30145, where it is necessary for clarification of the determination of fees for radiation machines with two or more tubes, to repeal the exception for radiation machines used for research and teaching, and to correct errors found in the authority citations.

Section 30145 was amended to specify the increase in registration fees and clarify that fees are nonrefundable. The ranking of dental priority radiation machines is clarified to refer only to human beings. A fee calculation found in a definition, section 30100(q), is placed into this section. Language and terminology usage is clarified.

Section 30145.1 was amended to specify the increase in registration fees for radiation machines used for mammography and accredited by an independent accrediting agency recognized under the federal Mammography Quality Standards Act [42 U.S.C. 263(b)].

Section 30194.1 was adopted to specify the criteria used to allow an applicant, if so requested and granted a specific license, to use material at multiple locations. This is necessary to clarify the determination of use of material at multiple locations that is included in the fee calculations in section 30231.

Section 30194.2 was adopted to specify the items necessary when applying to amend a specific license. This is necessary to clarify the means by which a licensee who is requesting an amendment to a specific license makes this request for the purposes of clarity of the license amendment fee specified in sections 30230(d) and 30231(c).

Section 30225 was amended due to changes made in section 30230.

Section 30230 was amended to specify that applicants for specific licenses, certain amendments to specific licenses and evaluations of sealed sources or devices are subject to nonrefundable application fees. A fee for an amendment to a specific license is only required when the amendment increases the maximum possession limit of the specific license. Capitalization errors are corrected.

Section 30231 was amended to specify the increased fees for specific licenses, the components and method used to calculate annual specific license fees. It specifies that a late fee must be paid if the annual specific license fee is paid late, specifies the fee for evaluations of sealed sources or devices containing sealed sources and maintenance of a registry certificate and makes all fees nonrefundable. The section was recodified to maintain a coherent structure, and some terminology usage was clarified.

Section 30232 was repealed due to the changes in section 30231.

Section 30408 was amended to specify the increased fees for licentiates, technologists, and limited permittees of Radiologic Technology, and approved schools of radiologic technology, and approved limited permit X-ray technician schools. Subsection (a) is further modified to remove and replace an unclear phrase and specifies the increased application fee and, for those who must pass an examination, the examination fee. It also allows an individual to be tested through the Department or an entity or organization designated by the Department to administer Department-approved examinations. Subsection (b) was modified to require that fees be paid each time an examination is retaken due to failure. Subsection (c) specifies the increased annual renewal fee. Subsections (d) and (e) were not amended. Subsection (f) was amended to be consistent with Health and Safety Code section 107085. Subsection (g) specifies the increased application fee for those applying to be an approved school. Subsection (h) specifies the increased annual fees that must be paid by approved schools. New subsection (i) specifies the fee an approved limited permit X-ray technician school must pay with an application to add an additional limited permit category to the already approved categories. Subsection (j) specifies the penalty a school must pay for failing to pay required annual fees on time. New subsection (k) informs the community that fees are nonrefundable.

Section 30535 was amended to specify the increased fees for certificates and special permits in nuclear medicine technology, the fee to repeat an examination and the penalty for failure to renew the certificate on time. It also clarifies that the fees for certificates in nuclear medicine technology are nonrefundable.

AUTHORITY

Sections 100275, 107160, 114870, 115000, 115060, 115065, 115080, 115085, and 115165, Health and Safety Code.

REFERENCE

Sections 107080, 107085, 107090, 107095, 107100, 107160, 114965, 114970, 114980, 115060, 115065, 115080, 115085, and 115165, Health and Safety Code.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: Local government cost cannot be estimated since such entities are not identified in billing databases as government. California's radiation protection program is funded through fees charged for services rendered and, per the Radiation Control Law (Health & Safety Code § 114960 et seq.), local and state government entities are not exempt from fees charged.
- B. Fiscal Effect on State Government: Expenditures are offset by fees collected.
- C. Fiscal Effect on Federal Funding of State Programs: No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- D. All cost impacts, known to the Department at the time the notice of emergency action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: Those failing to register reportable sources of radiation are required to pay back-fees for up to five years unless they can show possession took place more recently. It is estimated that total statewide costs that businesses and individuals may incur to comply with this regulation over five years is \$35,000,000.00.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulation may affect the following:

1. The creation or elimination of jobs within the State of California. The Department cannot estimate the impact due to increased fees.

2. The creation of new businesses or the elimination of existing businesses within the State of California. The Department cannot estimate the impact due to increased fees.
3. The expansion of businesses currently doing business within the State of California. The Department cannot estimate the impact due to increased fees.

The Department has determined that there will be an effect on small business in the following ways:

1. Small business is required to comply with this regulation.
2. Small business may derive a benefit from the enforcement of the proposed regulation.
3. Small business may incur a detriment from the enforcement of the proposed regulation.

The Department has determined that the regulations will have no impact on housing costs.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the emergency regulations, all the information upon which the emergency regulations are based, and the text of the emergency regulations. A copy of the initial statement of reasons and a copy of the text of the emergency regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the emergency regulations (rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the emergency regulations that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the emergency action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that, because the radiation control program is funded only through the Radiation Control Fund, no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying

out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the emergency action.

Other regulation changes may be scheduled for hearing at the same time appointed for public hearing on the action described in this notice. An agenda for the public hearing will be posted at the time and place of hearing designated above.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Cathy Ruebusch, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7841 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten working days prior to a public hearing.

GENERAL PUBLIC INTEREST

DEPARTMENT OF HEALTH SERVICES

NOTICE OF GENERAL PUBLIC INTEREST REGARDING THE DEPARTMENT OF HEALTH SERVICES' INTENT TO CHANGE THE DISPROPORTIONATE SHARE HOSPITAL PROGRAM REGARDING HOSPITAL ELIGIBILITY AND THE PRIMARY DATA SOURCE OF HOSPITAL COSTS USED IN PAYMENT CALCULATIONS

This notice is to provide information of public interest regarding the State's intent to change hospital eligibility for the Disproportionate Share Hospital (DSH) program and the primary data source used to determine hospital-specific payment amounts. To accomplish this change, it is the intent of the Department of Health Services (DHS) to submit to the federal Centers for Medicare & Medicaid Services (CMS), a State Plan Amendment (SPA) under Title XIX of the Social Security Act. The transition from the current program methodology to the new methodology is to be effective for State Fiscal Year 2005-06.

CHANGE IN THE DISPROPORTIONATE SHARE HOSPITAL PROGRAM

Increased pressure from CMS to eliminate the use of intergovernmental transfers that CMS deems inappropriate has caused a significant change in

hospital finance methodology. In the new hospital finance methodology private hospitals receive equivalent DSH funding through a Section 1115 waiver. Thus, the State must limit participation in the Disproportionate Share Hospital (DSH) program to public hospitals. All University of California medical centers will be added to the DSH Eligibility List published annually regardless of the hospital-specific DSH eligibility statistics. Only public hospitals eligible to draw funds from a newly created Safety Net Care Pool may receive DSH funding for costs above 100 percent. In addition the primary data source used to identify hospital patient expenses will change from the Office of Statewide Health Planning and Development Annual Financial Disclosure Report to the CMS Hospital and Hospital Health Care Complex Cost Report (Form CMS-2552-96).

PUBLIC REVIEW

The draft SPA detailing the proposed changes in hospital eligibility and data sources stated above will be available for review at local county welfare offices throughout the State. Interested persons may request copies, and may send written comments to Larry Brown, Chief, Disproportionate Share Hospital Unit, Medi-Cal Policy Division, Department of Health Services, 1501 Capitol Avenue, MS 4612, P.O. Box 997417, Sacramento, CA 95899-7417, or via e-mail at lbrown3@dhs.ca.gov.

FISH AND GAME COMMISSION

NOTICE OF RECEIPT OF PETITION

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2073.3 of the Fish and Game Code, the California Fish and Game Commission, on June 24, 2005, received a petition from the Department of Fish and Game to uplist the Baker's larkspur (*Delphinium bakeri*) from rare to endangered species status.

Baker's larkspur is known only from one population on a road cut along the Petaluma-Marshall Road in Marin County, California.

Pursuant to Section 2074.2 of the Fish and Game Code, the Commission will consider this petition at its August 18, 2005, meeting in San Luis Obispo.

Interested parties may contact Mr. Mark Stopher, Acting Chief, Habitat Conservation Planning Branch, Department of Fish and Game, at telephone (916) 653-4875 for information on the petition or to submit information to the Department relating to the petitioned species.

RULEMAKING PETITION DECISIONS

BOARD OF PRISON TERMS

NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS

California Code of Regulations (CCR) Title 15, Crime Prevention and Corrections Division 2, Board of Prison Terms

PETITIONERS

George D. Rounds, Jr.'s petition to amend Title 15 CCR §§ 2000 and 2400, submitted under Government Code section 11340.6, was received by the Board of Prison Terms (Board) on May 20, 2005. Subsequently, the Board received numerous *identical* petitions requesting that the Board amend CCR sections 2000 and 2400. Therefore, this petition will serve as a response to George Rounds petition as well as those listed as follows: Ahmad Phillips, Ignacio Polvos Pena, Finny Earl Wallace, Eddie J. Wills (received 6/6/05); Marcial S. Dayrit, Michael Espinoza, Thomas Pratt, Dana Singer (received 6/7/05); Patrick Carr, Tyrone Forman, Timothy Ellis Ross, Alten Sullivan (received 6/8/05); Gary Metoyer (received 6/9/05); Dwight M. DeBose, Kenya Gayles, Larry D. Hines, Ronald Harris, Curtis Holliday, Donald Johnson, Maurice Johnson, Luis Molina, A.J. Monteon, O'Lyric Robinson, Gregory L. Rounds, Thomas James Welch, DePriest Williams (received 6/10/05); Howard Burgess, Odis Crowel, Felipe Lopez, Abelino Ramos, James Rives, Koeurn, Roeun (received 6/13/05); Craig L. Bowens, Lester Hands, Ronald Lewis, Walter Thompson, Jr., Voltaire Williams (received 6/14/05); Lamont Ervin (received 6/15/05); Rodney A. Bryant, Michael Hughley, Andre B. Island, Carlton Van Scott, Clifton Williams (received 6/16/05); Kevin O. Howard, Jackie A. Queen (received 6/17/05); Michael Green, John Lee Smith (received 6/20/05); Ricky Benton, Kevin Jackson, A. Lara (received 6/21/05); and Walter Lee Cole, Perry D. Fisher, Florentino B. Nantes, De Van Tran (received 6/22/05). For any petitions concerning the same matter, received by the Board after June 22, 2005, petitioners will be forwarded a copy of this response, which will be published in the California Regulatory Notice Register on July 8, 2005.

AUTHORITY

Under authority established in Penal Code (PC) §§ 3041, 3052 and 5076.2, the Board may promulgate and amend regulations for the administration of parole.

CONTACT PERSON

Please direct any inquiries regarding this action to Kelly L. Winsor, Regulations Coordinator, Board of Prison Terms, by mail at 1515 K Street, Sixth Floor, Sacramento, CA 95814, by telephone at (916) 324-9898, by facsimile at (916) 322-3475, or by email to regcomment@bpt.ca.gov.

AVAILABILITY OF PETITION

The petition for amendment of the regulations is available upon request directed to the Board's contact person.

SUMMARY OF PETITION

Petitioners request that the Board amend Title 15 CCR §§ 2000 and 2400 for the following reasons: 1) they are not reasonably necessary; 2) they lack evidentiary support; 3) they exceed the Board's authority by altering, amending enlarging or impairing the scope of the conferring statutes; 4) they lack any rational basis given they are arbitrary, discriminatory and capricious; and 5) the supporting studies are inconsistent with the spirit of the Administrative Procedures Act (APA) Government Code § 11340 et seq.

BOARD DECISION

The Board denies the petition to amend Title 15 CCR §§ 2000 and 2400, except it agrees to incorporate a definition or use of the term "minimum eligible parole release date," as needed within part of a clean up regulation package later in the year. See Petitioners' recommendation (b) related to CCR § 2400.

REASONS FOR BOARD'S DENIAL OF PETITION TO AMEND REGULATIONS

Petitioners' general claims noted in the summary are conclusory and thus shall not be directly addressed, except the Board's authority to promulgate regulations concerning parole is noted above. However, specific inconsistencies alleged shall be addressed.

PART I OF PETITIONERS' ARGUMENTS FOR REGULATION CHANGE

California Code of Regulations,
Title 15, Crime Prevention and Corrections
Division 2, Board of Prison Terms
Article 11. Parole Consideration Criteria and
Guidelines For Murders Committed on or
After November 8, 1978, and Specified Attempted
Murders.

§ 2400. Scope of Article.

[Note the following is the text of the regulation shown in italics. However, the paragraph letters assigned to provisions identified by the petitions are not contained in the official current text. For example, even though the first paragraph below starts the

regulation, it is labeled "m)" corresponding to petition's argument "Part I-(m)." As reference, the full original text is provided in Appendix "A".]

m) *The criteria and guidelines in this article apply to prisoners sentenced to prison for first and second degree murders committed on or after November 8, 1978 and attempted murders where the perpetrator is sentenced for life pursuant to the provisions of Penal Code section 664.*

Petitioners assert that application of these more unfavorable rules to persons convicted under post 11/7/1978 law, but not to those persons convicted under pre 11/8/1978 law is discriminatory and irrational. However, (*In re Stanworth* (1982) 33 Cal.3d 176, 183, and *In re Seabock* (1983) 140 Cal.App.3d 29, approved of the constitutionality of just such a scheme.

a) *The guidelines in this article are based on the public's expressed intent in amending Penal Code sections 190 and 664 that a person convicted of first or second degree murder or attempted murder, as specified, should be incarcerated for an extended period of time.*

Petitioners offer another iteration of this provision posing minor distinctions not supported by citation to any evidence.

b) *The prisoner's minimum eligible parole date is established by statute.*

Petitioners recommend that the term used—minimum eligible parole date—be changed to "minimum eligible parole release date." The Board agrees to add, replace or distinguish as necessary the existing term with that proposed by Petitioners. This can wait however, for a clean up package later in the year.

c) *The amount of good conduct credit that a prisoner sentenced for first or second degree murder may earn to reduce the minimum eligible parole date is established by statute. (Penal Code sections 2930 et seq.)*

Petitioners recommend that this provision be made more specific, e.g. referencing instead PC section 2931 rather than the entire article. However, should the Board comply the resulting regulations would be duplicative of the specific terms of the statute.

d) *Life prisoners convicted of attempted murder do not earn these credits. The department will determine the minimum eligible parole date.*

Petitioners recommend that this provision be made more specific, e.g. referencing instead PC section 2931 rather than the entire article. However, should the Board comply the resulting regulations would be duplicative of the specific terms of the statute.

e) *The length of time a prisoner must serve prior to actual release on parole is determined by the board. The amount of postconviction credit a*

prisoner may earn to reduce the length of time prior to release on parole is determined by the board.

Petitioners recommend that the first sentence of this provision be made more specific, e.g. noting that the Board's discretion is bound by the statutes imposing a minimum and maximum term, viz., a court's sentence of 15 years to life. However, given that many courts throughout history have described the Board's discretion as exceedingly broad, the distinction recommended by the Petitioner would be duplicative of statute and other portions of the regulatory scheme.

- f) *This article implements Penal Code section 3041 and concerns only the board's exercise of discretion in determining whether a prisoner is suitable for parole and, if so, when the prisoner should be released on parole.*

Petitioners assert that the Board's discretion under PC § 3041 is impliedly limited by PC § 3040, such that the Board may not determine the minimum term of a 15-life or 25-life term. However, the Board's regulations seek to determine a term based upon an individual's case factors and do not set a minimum term, but rather an expected term once the prisoner is found suitable for parole.

- g) *The standards for the department's action in reducing the minimum eligible parole date and the standards for the board's decision whether to reduce the period of confinement are different.*

Petitioners assert that PC § 190 gives the Board discretion to set terms, but by implication excludes the Department of Corrections (CDC) from having any role. However, that interpretation would deny any effect to the related credit assessment process set forth in PC § 2930 et seq.

- h) *The department's decisions pursuant to Penal Code sections 2930 et seq. do not affect the Board's decision concerning postconviction credit pursuant to these rules.*

Petitioners assert that the Board exceeds the scope of authority conferred under PC § 190 when it adopts and implements term guidelines less generous than the 1/3 credits that statute provides for first and second degree murder terms. However, petitioners fail to consider that the Board's lifer suitability hearing panel has discretion to reduce those minimum guidelines for terms by up to 4 months for each year of good behavior and participation.

- i) *A prisoner committed for first or second degree murder or attempted murder shall have his or her initial parole consideration hearing as provided in § 2268.*

Petitioners assert that PC § 190 by virtue of its term reducing credit provisions, deprives the Board of authority to conduct an initial parole suitability

hearing fixing the term of imprisonment. However, Petitioners fail to explain how such a strained interpretation would control over the express language in PC §§ 3041(a)—“one year prior to the inmate's minimum eligible parole release date a panel . . . shall again meet with the inmate and shall normally set a parole release date [under the procedure and rights] as provided in Section 3041.5.”

- j) *The prisoner will have documentation hearings as provided in § 2269.1, but no specific amount of postconviction credit will be granted until the board has established a period of confinement.*

Petitioners assert that the Board exceeds the scope of authority conferred under PC § 190 when it adopts term guidelines less generous than the 1/3 credits the statute provides for first and second degree murder convictions. In essence, petitioners repeat argument (h), above. Consequently, see Board response, above.

- k) *Although many of the sections in this article are the same as the sections in Article 5, they are repeated in this article to avoid confusion between the rules applicable to prisoners who committed murders on or before November 7, 1978 and these rules which apply to prisoners who committed murders on or after November 8, 1978, and those who committed specified attempted murders. The suitability criteria are the same for both groups.*

Petitioners admit philosophically that the criteria for parole suitability for pre-1978 and post-1978 life offenses can be the same, but opines that the statutory scheme does not require them to be the same. He urges that the Board clarify in the regulation that those provisions are not required by statute. The Board agrees that it has discretion to adopt the regulation currently in existence, but does not see the need to burden the user of the regulations with an exegesis explaining why it chose to do so. That is the province of the statement of reasons in a rulemaking file.

- l) *The guidelines for establishing the periods of confinement are different because of the change in the minimum term for first degree murder and the change from a determinate to an indeterminate term for second degree murder and attempted murder. The provisions for adjusting the terms for other offenses are also different because of the change in Penal Code section 669, which permits courts to impose sentences consecutive to life terms (Stats. 1978, Ch. 579, eff. 1/1/79).*

Petitioners assert that the changes in first degree murder post 1978 from life to 25-life reduced the penalty and that reduction ought to be reflected in the Board's regulations. However, given that the minimum imprisonment for a life crime was 7 years, the post 1978 change actually increased the penalty. Note

issue (a) above where petitioners do not dispute that the 1978 changes increased the penalty for covered offenses.

Note: Authority cited: Section 5076.2, Penal Code. Reference: Sections 182, 190, 664, 2930 et seq., 3040, 3041, 3046 and 5076.1, Penal Code.

PART II OF PETITIONERS' ARGUMENTS FOR REGULATION CHANGE

§ 2000. Rules of Construction and Definitions.

*[Note, in many cases Petitioners cite a provision by subject but reference the incorrect subsection. For example, 'Good Time Credit' is numbered by Petitioners as (b)(49), instead of (b)(51). Excerpts from the current text are provided below with the appropriate text emphasized, however **bolding is not in the original**. As reference, the full original text is provided in Appendix "A".]*

(a) Rules of Construction. The following rules of construction apply to the regulations contained in this division, except as otherwise noted:

(1) The enumeration of some criteria for the making of discretionary decisions does not prohibit the application of other criteria reasonably related to the decision being made.

(2) The order in which criteria are listed does not indicate their relative weight or importance.

(3) "Inmate," "prisoner," or "parolee" applies to any person who is or has been committed to the custody of the Director of Corrections, including inmates, residents, parolees, and dischargees, regardless of that person's present status.

(b) Definitions. For the purpose of the regulations contained in this division the definitions below shall have the following meanings:

(1) ISL Prisoner. A person sentenced to prison for a crime committed on or before June 30, 1977, who would have been sentenced pursuant to Penal Code section 1170 if he had committed the crime on or after July 1, 1977.

(2) DSL Prisoner. A person sentenced to prison pursuant to Penal Code section 1170 for a crime committed on or after July 1, 1977. For the purpose of these rules, once an ISL prisoner has received a retroactively calculated DSL release date all rules applying to DSL prisoners apply to the ISL prisoner's DSL release date and parole.

(3) Life Prisoner. A prisoner serving a sentence of life with the possibility of parole. The parole date is determined by the board. Life sentences may be imposed for the following crimes or conspiracy to commit any of the following crimes:

(A) First degree murder (Penal Code section 187).

(B) Second degree murder (Penal Code section 187) committed on or after November 8, 1978.

Petitioners assert that PC § 1168, that prevents courts from fixing terms or the duration of the period of imprisonment for crimes not sentenced under PC § 1170, conflicts with PC § 190. They argue that § 190 requires application of credits under PC § 2931. Thus, petitioners assert the regulation also conflicts with PC § 190. Instead, the Board posits its intent is that the regulation harmonize and interpret all the applicable statutes by leading to a rational result affording effect to all of them—i.e., that the parole date is determined by the Board.

(C) Kidnapping for extortion or ransom, with bodily harm to the victim (before September 22, 1951) and without bodily harm to the victim (since September 22, 1951); and kidnapping for robbery (Penal Code section 209).

(O) Attempted willful, deliberate, and premeditated murder of a peace officer or firefighter committed on or after January 1, 1998 (Penal Code section 664).

(4) Adjusted Maximum DSL Date. This date is computed by adding any at large time to the unadjusted maximum DSL date.

(10) Board of Prison Terms (BPT). The administrative board responsible for setting parole dates, establishing parole length and conditions, discharging sentences for certain prisoners and parolees; granting, rescinding, suspending, postponing, or revoking paroles; conducting disparate sentence reviews; advising on clemency matters; and handling miscellaneous and other statutory duties. Persons under the BPT's jurisdiction are all adult felons committed by superior courts to the Director of Corrections under Penal Code sections 1168 and 1170, and all adult felons sentenced under the Indeterminate Sentencing Law.

Petitioners recommend that the Board revise this definition to specify with particularity all of the exceptions to the general language concerning the Board's powers and duties. However, the Board deems that doing so would be unwieldy and duplicative of applicable statutes, regulations, and court decisions. The brevity of the general definition currently provided in the regulations better serves the purposes of an introductory description 'in a nutshell.'

(11) Briggs Initiative: Proposition 7, November 7, 1978 general election, specifying new minimum eligible parole release dates for first and second degree murders, effective November 8, 1978.

Petitioners restate their argument under (h) concerning § 2400 above, thus recommending that the definition of the Briggs initiative be similarly amended. Please see discussion of argument (h), above.

(51) Good Time Credit. Credit for a DSL prisoner's good behavior and participation in

prison program received pursuant to Penal Code section 2930, et seq. Good time credit advances the DSL release date.

Petitioners restate their argument under (3) and (11) concerning § 2000, above, viz., that the 1/3 credits provided in PC § 2931 must reduce 15-life and 25-life terms. Please see discussion of those arguments, above.

(64) M.R.D.: Maximum Release Date: the latest date on which a DSL prisoner can be released from confinement. This date is computed by subtracting preprison credit from the period of confinement prescribed by the court and adding this period of time to the reception date. In computing the maximum release date, good time credit is not subtracted. This date shall be recomputed to reflect the addition of any time at large.

(65) Maximum Term. The longest statutory period of time an ISL nonlife 1168 or life prisoner may remain under the jurisdiction of the board.

(66) Minimum DSL Date. The earliest date on which a DSL prisoner may be released from prison. This date is computed by subtracting all preprison credit and all possible good time credit from and adding any at-large-time to the period of confinement under the DSL and adding this period of time to the reception date.

(67) Minimum Eligible Parole Date (MEPD). The earliest date on which an ISL or life prisoner may legally be released on parole. If a prisoner is serving both a life or ISL sentence and a determinate sentence and the determinate sentence release date is later than the statutory MEPD for the life or ISL sentence, the determinate sentence release date is the MEPD.

(68) Minimum Term. The shortest statutory period of time an ISL prisoner must remain under the jurisdiction of the board, including time in prison and on parole.

Petitioners assert that the 7 year MEPD for 7-life crimes provided in PC § 3046 ought to apply to post 11/7/1978 sentences that carry 15-life and 25-life terms. However, to do so would frustrate the clear intent of the Briggs Initiative—to increase prison terms for specified serious offenders. Petitioners fail to cite any direct support for this absurd statutory interpretation.

(103) Work-Time-Credit: A reduction of the time served for performance in work, training or education programs.

Note: Authority cited: Sections 3041, 3052 and 5076.2, Penal Code. Reference: Sections 187, 189, 205, 209, 217.1, 219, 664, 667.51(c), 667.7, 667.75, 669, 2933, 3041, 3046, 3056, 3057, 3060, 4500, 4801,

5075, 5076.1 and 12310, Penal Code; Section 1672(a), Military and Veterans Code; and Initiative, Proposition 7, November 7, 1978, General Election.

APPLICATION OF THE APA REQUIREMENTS TO THIS PETITION FOR REGULATION CHANGE

Petitioners have failed to carry their burden under Government Code § 11340.6. Government Code § 11340.6 requires that a petition to adopt, amend or repeal regulations shall state the following clearly and concisely: (a) the substance or nature of the regulation, amendment, or repeal requested; (b) the reason for the request; and (c) reference to the authority of the state agency to take the action requested.

Although Petitioners have described at some length his quarrels with the Board's existing regulations in Title 15 CCR §§ 2000 and 2400, he has failed to state clearly how he wants the regulations to read. The Petitioners admit that their legal reasoning comes to novel conclusions, but urge the Board to dramatically change its own interpretation of the applicable scheme for setting parole terms for life prisoners. Petitioners' statements that the Legislature intended reduction of the Board's role by the former's adoption of conflicting statutes is simply not accompanied by any authority, and the Board can find no authority to give these statements any credibility. The Board declines to substantially reduce its role and exercise of the discretion conferred by the Legislature without compelling reasons to do so. The recent California Supreme Court opinion *In re Dannenberg* (2005) 34 Cal.4th 1061, —Cal.Rptr.3d —;— P.3d—affirmed the Board's interpretation of its own discretion in these matters as exceedingly broad.

[W]e accord significant weight and respect to the longstanding construction of a law by the agency charged with its enforcement. (E.g., *Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 436; *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12.) This is particularly true when the Legislature, presumably aware of the established administrative construction, has implied its acquiescence therein by amending the governing statute in ways that do not disturb the agency's policy. (E.g., *Yamaha Corp. of America v. State Bd. of Equalization* (1999) 73 Cal.App.4th 338, 353; *Thornton v. Carlson* (1992) 4 Cal.App.4th 1249, 1257.) See *Dannenberg*, at 34 Cal.4th 1082

Dannenberg, at 1078–79, also cited the Board's scheme under 15 CCR § 2400 approvingly. This would caution the Board against adopting the Petitioner's novel interpretations of the applicable parole law.

In response to these requirements, the Board has adopted regulations covering the various categories of indeterminate life inmates. One set of these

regulations applies specifically to noncapital murderers who committed their crimes on or after November 8, 1978. (Cal. Code Regs., tit. 15, § 2400 et seq.) *fn. 6* If such a murderer is found suitable to have a parole release date set under section 3041, subdivision (a), the regulations specify that the inmate's release date is to be set by calculating a "base term." (Cal. Code Regs., tit. 15, § 2403(a).) The first step in the calculation is to determine where the particular murder fits, in terms of its relative seriousness, on a bi-axial "matrix" of factual variables. (*Ibid.*) The matrix specifies lower, middle, and upper "base terms" for each matrix category. For second degree murderers, serving statutory sentences of 15 years to life, these "base terms" range from 15, 16, or 17 years for the least serious matrix category to 19, 20, or 21 years for the most serious. (*Id.*, § 2403(c).)

For the reasons stated above, the Board's existing regulations regarding setting life prisoner parole terms, Title 15 CCR §§ 2000 and 2400, are substantially consistent with statutory law. Thus, no substantial regulatory action appears necessary at this time and the Board denies the petition, except it agrees to incorporate a definition or use of the term "minimum eligible parole release date" as needed within part of a clean up regulation package later in the year. See Petitioners' recommendation (b) related to CCR § 2400.

PROPOSITION 65

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(Proposition 65)

NOTICE TO INTERESTED PARTIES

CORRECTION TO THE NOTICE OF
MODIFICATIONS TO TEXT OF
PROPOSED REGULATIONS

TITLE 22, CALIFORNIA CODE OF
REGULATIONS SECTION 12805
OAL NOTICE FILE No. Z-01-1019-06

The Office of Environmental Health Hazard Assessment (OEHHA) is making a correction to the Notice of Modifications to Text of Proposed Regulations for the chemical Di(2-ethylhexyl)phthalate (DEHP) (by intravenous injection) which was published on **June 24,**

2005 in the *California Regulatory Notice Register* (Register 05, No. 25-Z). The title of the notice erroneously referred to Section 12705 which is not the affected section for these changes. Rather, the modifications were made to the text of proposed regulations, Title 22, Section 12805 and the correct title of the notice should be: "Notice of Modifications to Text of Proposed Regulations, Title 22, California Code of Regulations, Section 12805."

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65)

NOTICE OF MODIFICATIONS TO TEXT OF
PROPOSED REGULATION

TITLE 22, CALIFORNIA CODE OF
REGULATIONS, SECTION 12900
OAL NOTICE FILE No. Z-05-0208-03

As required by Government Code section 11346.8(c), and Title 1, Section 44 of the California Code of Regulations, the Office of Environmental Health Hazard Assessment (OEHHA) is providing notice of changes made to a proposed regulation: Title 22, California Code of Regulations, Section 12900. This proposed regulation was originally the subject of a Notice of Proposed Rulemaking issued on February 18, 2005 and published in the California Regulatory Notice Register (Register 2005, No. 7-Z). A public hearing on this regulatory proposal was held on April 4, 2005. Written and oral testimony was accepted at the hearing. In addition, written comments were received during a 45-day public comment period, which was extended an additional fourteen days to April 18, 2005. OEHHA has reviewed the comments it received regarding this regulatory proposal and is now proposing to revise the proposed regulation. A working draft summary of the comments received at the hearing and in writing during the comment period, along with OEHHA's responses to those comments is available on the OEHHA website at www.oehha.ca.gov or may be requested from the Proposition 65 Implementation Office at (916) 445-6900.

A copy of the text of the amended proposed regulation is attached. Deletions are designated in strikeout, and additions are designated in underline in the proposed text. It should be noted that many of the proposed changes are not substantive and merely reflect editorial, grammatical or formatting changes. However, substantive changes to the test of the

regulation have also been made. A clear copy of the amended text is also attached for ease of readability. OEHHA will accept written comments on the amended proposed regulation between July 8, 2005 and August 22, 2005. All written comments must be submitted to OEHHA by mail, fax, courier, e-mail or hand-delivery, no later than 5:00 p.m. on **August 22, 2005**, and addressed to:

Ms. Cynthia Oshita
Office of Environmental Health
Hazard Assessment
Mailing address: P.O. Box 4010
Sacramento, California 95812-4010
Street address: 1001 I Street, 19th Floor
Sacramento, California 95814
Fax No.: (916) 323-8803

Inquiries concerning the action described in this notice may be directed to Cynthia Oshita, in writing at the address given above, or by telephone at (916) 445-6900.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

AIR RESOURCES BOARD

Area Designations 2004

This action is the Air Resources Board's 2004 area designations for state ambient air quality standards.

Title 17
California Code of Regulations
AMEND: 60201, 60202, 60205, 60210
Filed 06/23/05
Effective 07/23/05
Agency Contact: Diane Kiyota (916) 322-2884

BOARD OF EDUCATION

Persistently Dangerous Schools

This regulatory action is in response to the Unsafe School Choice Option provisions of the No Child Left Behind Act of 2001. The regulation sections respectively describe the criteria used to identify persistently dangerous schools, definitions regarding the criteria and how the data will be collected.

Title 5
California Code of Regulations
ADOPT: 11992, 11993, 11994
Filed 06/23/05
Effective 07/23/05
Agency Contact: Debra Strain (916) 319-0641

BOARD OF EDUCATION

Statewide Charter Schools

In this regulatory action, the State Board of Education amends and adds regulations pertaining to charter schools in California, with particular emphasis on "statewide charter schools" under Education Code section 47605.8.

Title 5
California Code of Regulations
ADOPT: 11967.6, 11967.7, 11967.8 AMEND: 11967, 11968, 11969
Filed 06/22/05
Effective 06/22/05
Agency Contact: Debra Strain (916) 319-0641

BOARD OF PRISON TERMS

Attempted Murder

This regulatory action implements the court order of In re Thomas Sims by amending the guidelines for prisoners convicted of attempted murder. It clarifies incomplete and confusing references to certain attempted murders, adds two crimes of attempted murder to the list of life crimes, and establishes three separate attempted murder matrices of suggested base terms: attempted willful, deliberate and premeditated murder; attempted murder of a police officer or fire fighter; and attempted willful, deliberate and premeditated murder of a police officer of fire fighter.

Title 15
California Code of Regulations
AMEND: 2000, 2400, 2403
Filed 06/22/05
Effective 06/22/05
Agency Contact: Kelly Winsor (916) 324-9898

CALIFORNIA SCHOOL FINANCE AUTHORITY

CSFP—State Charter School Facilities Incentive Grant

This emergency regulatory establishes an application process for allocating funds received from the U. S. Department of Education, State Charter School Facilities Incentive Grants Program.

Title 4
California Code of Regulations
ADOPT: 10175, 10176, 10177, 10178, 10179, 10180, 10181, 10182, 10183, 10184, 10185, 10186, 10187, 10188, 10189, 10190, 10191
Filed 06/27/05
Effective 06/27/05
Agency Contact: Mark Paxson (916) 651-6846

CAL-PERS

Retroactive Health Premium Reimbursement

Restricts retroactive reimbursements of excess health Insurance premiums to not more than six months.

Title 2

California Code of Regulations

AMEND: 599.502, 599.506

Filed 06/24/05

Effective 07/24/05

Agency Contact: Marilyn Clark (916) 326-3007

DENTAL BOARD OF CALIFORNIA

Examination Requirements

This regulatory action updates the procedures to be tested in the Restorative Technique exam.

Title 16

California Code of Regulations

AMEND: 1041

Filed 06/22/05

Effective 07/22/05

Agency Contact: Richard DeCuir (916) 263-2300

DEPARTMENT OF CORPORATIONS

Mandated Electronic Filing Under 25102(f)

This action provides that the filing of the notice required under Corporations Code section 25102, subdivision (f), must be made electronically; provides for a hardship exemption from the electronic filing requirement; and updates the notice form and instructions with minor coordinating changes.

Title 10

California Code of Regulations

AMEND: 260.102.14

Filed 06/22/05

Effective 07/22/05

Agency Contact: Kathy Womack (916) 322-3553

DEPARTMENT OF CORRECTIONS

Repeal of the Classification Score Forms Pilot Program

This action repeals the Classification Score System Pilot Program. Pursuant to Penal Code section 5058.1, pilot programs are in effect for 24 months from the date of certification. This Pilot Program started November 30, 2000, and the effective period has long passed.

Title 15

California Code of Regulations

REPEAL: 3999.1.7

Filed 06/27/05

Effective 06/27/05

Agency Contact: Gail Long (916) 358-1655

DEPARTMENT OF FOOD AND AGRICULTURE

Karnal Bunt Disease Interior Quarantine

This filing is a certificate of compliance for an emergency regulatory action which removed the Karnal bunt disease interior quarantine from a portion of the Palo Verde Valley in Riverside County considered to be free from disease thereby eliminating restrictions in the intrastate movement of hosts and possible carriers

Title 3

California Code of Regulations

AMEND: 3430(b)

Filed 06/22/05

Effective 06/22/05

Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE

Asian Longhorned Beetle Eradication Area

This emergency regulatory action establishes the entire county of Sacramento as an eradication area for the Asian longhorned beetle (*Anoplophora glabripennis*), and establishes the means and methods that may be used to eradicate and control this pest within this area.

Title 3

California Code of Regulations

ADOPT: 3591.18

Filed 06/27/05

Effective 06/27/05

Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF HEALTH SERVICES

Radiation Control Fee Adjustments

This emergency regulatory action increases the fees for registration, licenses, permits, and evaluations imposed for the purposes of radiation control paid into the Radiation Control Fund and makes other related changes.

Title 17

California Code of Regulations

ADOPT: 30194.1, 30194.2 AMEND: 30100, 30145, 30145.1, 30225, 30230, 30231, 30408, 30535

REPEAL: 30232

Filed 06/22/05

Effective 06/22/05

Agency Contact: Cathy Ruebusch (916) 440-7841

DEPARTMENT OF INSURANCE

2005 Income Eligibility Guideline Update

The Department of Insurance is amending its California Low Cost Automobile Insurance Program Manual by amending Exhibit C contained within that manual in order to bring its income eligibility guidelines into conformity with those federal poverty levels for 2005 (Federal Register, Vol. 70, No. 33, February 18, 2005, pp. 8373-8375). The aforementioned manual is incorporated by reference in title 10,

section 2498.6, California Code of Regulations, which is entitled "California Automobile Insurance Low Cost Program Plan of Operations."

Title 10

California Code of Regulations

AMEND: 2498.6

Filed 06/23/05

Effective 07/23/05

Agency Contact:

Michael Riordan (415) 538-4226

DEPARTMENT OF JUSTICE

Surety Bond Dance Studio

This is a surety bond form for the Secretary of State concerning Dance Studios.

Title 11

California Code of Regulations

AMEND: 63.2

Filed 06/24/05

Effective 06/24/05

Agency Contact: Anne M. Burr (415) 703-1403

DEPARTMENT OF SOCIAL SERVICES

Food Stamp Program Eligibility for Drug Free Felons

This regulatory action amends the MPP to extend food stamp benefits to individuals convicted of felony drug offenses for the use or possession of a controlled substance. It describes the conditions of eligibility to obtain these benefits and lists a number of other felony drug offenses that disqualify an individual from the benefits. Pursuant to Welfare and Institutions Code section 18901.3 this regulatory action is a deemed emergency that is exempt from OAL review. This emergency regulatory action is effective on June 29, 2005 and will expire on October 28, 2005. The Certificate of Compliance for this action is due no later than October 27, 2005.

Title 22, MPP

California Code of Regulations

AMEND: 63.103.2, 63-300.5, 63-402.229, 63-503.441, 63-509(b), 63-509(c), 63-801.737(QR)

Filed 06/29/05

Effective 06/29/05

Agency Contact: Rick Torres (916) 657-2659

OCCUPATIONAL SAFETY AND HEALTH

STANDARDS BOARD

Automotive Lifts

This regulatory action updates the standards and terms in the General Industry Safety Orders dealing with automotive lifts.

Title 8

California Code of Regulations

AMEND: 3541, 3542, 3543, 3544, 3545, 3646, 3548, 3549

Filed 06/28/05

Effective 07/28/05

Agency Contact: Marley Hart (916) 274-5721

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE**

WITHIN FEBRUARY 2, 2005

TO JUNE 29, 2005

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

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 05/23/05 ADOPT: 3939.14
 05/17/05 AMEND: 645
 03/28/05 AMEND: 2611
 03/11/05 ADOPT: 3944.1
 02/08/05 ADOPT: 3939.12

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04/25/05 AMEND: 7056, 7060, 7062.1, 7064,
7066, 7078.4
04/14/05 ADOPT: 7340, 7341, 7342, 7343, 7344,
7345, 7346, 7347
04/07/05 AMEND: 6935, 6935.2
02/02/05 ADOPT: 1338.1, 1443.1 AMEND: 1338

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06/17/05 AMEND: 1300.70.4
02/03/05 AMEND: 1000

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04/22/05 AMEND: 42-101
02/16/05 ADOPT: 31-503 AMEND: 31-206, 45-
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